S.B. Civil Writ Petition No.73/01

25.01.2007

Hon'ble Mr. Justice Mohammad Rafiq

Mr. K.K. Sharma, Advocate for petitioner.
Mr. R.B. Mathur, Advocate for respondent.

REPORTABLE

Under challenge in this writ petition is the order dated 29.3.1994 whereby the District Excise Officer, Kota directed for adjustment of a sum of Rs.45 lacs against the amount of security deposited by the petitioner. The petitioner was holder of exclusive privilege licence holder for wholesale and retail sale of Indian Made Foreign Liquor and Beer and retial sale of country liquor for Kota group of shops for the year 93-94 and 94-95. When the licence is granted under exclusive system, the licensee agrees to make

payment of such lump sum instead of or in addition to the excise duty as may be determined by the Excise Commissioner on the basis of details given. In the present case, the grievance has been raised only with respect to the exclusive privilege amount of the country liquor licence. According to the condition of the contract, monthly installment of exclusive privilege amount is required to be deposited by 10th of each succeeding month and rebate as prescribed under clause (1)(kha) on the liquor lifted by the licensee is granted. The allegation of the petitioner is that from the very beginning of the licence i.e. w.e.f. 1.4.93, he was facing problem in obtaining the liquor from the government ware house. According to the system prevalent, a licensee is required to

deposit in cash the purchase price of the country liquor in government treasury by challan and has to produce the challan to the government warehouse from where the licence is granted for supply of the country liquor to the extent of amount deposited by him. Ever since commencement of the work from 1st April, 93, the petitioner was never supplied the country liquor to the extent of his payment and there had also remained surplus of the amount deposited by the petitioners with the respondents. Details of the relevant period where the money deposited by the petitioner had remained deposited with the respondents and was in excess of the value of the liquor supplied have been given by the petitioner in Schedule 1 to Schedule 4. The petitioner has filed Schedule 5 which he claims to have

obtained from the office of respondents to show that in fact the government did not even have sufficient quantity of liquor to cater to the demand of the licence holders. He therefore submits that there was absolutely no justification for the District Excise Officer, Kota in directing adjustment of the security money against alleged shortfall due to the petitioner not been able to lift sufficient quantity of liquor as in fact the shortfall in demanded supply was attributable to the respondents themselves. The learned counsel for the petitioner in support of his arguments has relied on the judgment of the Hon'ble Supreme Court in State of Rajasthan & Ors. Vs. Nandlal & Ors. reported in 1993 Suppl. (I) SCC 681.

On the other hand Mr. R.B. Mathur

learned counsel for the respondents supported the impugned order Annexure-7 and argued that the petitioner was sanctioned licence for the year 92-93, 93-94 and 94-95. According to the policy laid down by the government for sale of country liquor, 15% increased amount on the privileged amount was agreed to be paid by the licensee for each succeeding year. The petitioner was issued liquor according to his demand w.e.f. 1.4.1993. It has been denied that there remained any surplus or balance with the respondents. It was stated that the relevant statements would be produced before the Court at the time of hearing. This assertion has been made with a further assertion that there is much difference between the statement produced by the petitioner and those prepared by

the department and the same would be produced before the Court at the time of hearing. The learned counsel, therefore, argued that the writ petition be dismissed.

While on the one hand the petitioner has filed month-wise details, nay-date-wise details with regard to opening balance, the deposits and the total of the money and the value of the quantity of liquor issued to him as also the balance that remained with the respondents but the respondents have given very evasive, vague and ambiguous reply to all these specific assertions. This very controversy has travelled upto Hon'ble Supreme Court in Nandlal case (supra) in which, the various judgments passed by this Court came to be challenged by the State Government. In

that case too licence was granted under guarantee scheme / exclusive privilege system and there was short lifting of liquor from warehouses by the licensees resulting in their failure to make full payment of the guaranteed amount / stipulated lump sum amount. When recovery of the deficient amount was sought to be made, the same was resisted by the licensee on the ground that short lifting was due to inability of the State Government in supplying requisite quantity. In those facts, it was held by their Lordships that though liability of the licensees to pay the agreed sum would depend upon supply of requisite quantity of liquor, the burden of proof of short supply lies on the licensee challenging the liability. The Hon'ble Supreme Court on the basis of certain facts which need

to be taken into consideration for determination of the short supply held that it must be specifically established in each case on the basis of reliable evidence that despite demand for for requisite supply, the department failed to meet the same. With those observations the matter was remanded back to the authorities in the State Government to decide afresh after giving an opportunity to each licensee to establish his case.

In my considered view, in the facts of the present case, particularly when the respondents have not come out with complete and full details to meet the specific case set up by the petitioner, it would be only appropriate to remand the matter to District Excise Officer, Kota with a direction to provide an opportunity to the petitioner to

establish that despite demand by him, the department failed to supply the liquor in requisite quantity.

In the result, the writ petition is allowed. The order dated 29.3.1994 is quashed and set aside and the matter is remanded back to District Excise Officer, Kota with a direction to make a fresh determination after providing an opportunity to the petitioner. Such determination should be made keeping in view the guidelines contained in the aforesaid judgment of the Hon'ble Supreme Court. The District Excise Officer, Kota would be at liberty to pass a fresh order either way on the basis of such determination as expeditiously as possible but in no case later than 6 months from the date copy of this judgment is produced before him. Recovery

of the amount already made by way of adjustment shall abide by such determination.

With these observations, the writ petition is allowed. There shall be no order as to costs.

(Mohammad Rafiq),J.

RS/-